NO. 01-8419 (3)

IN THE

SUPREME COURT OF THE UNITED STATES

KENNEDY KIRK, PETITIONER

VERSUS

STATE OF LOUISIANA, RESPONDENT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT FOR THE STATE OF LOUISIANA

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KENNEDY KIRK, PETITIONER

VERSUS

STATE OF LOUISIANA, RESPONDENT

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State of Louisiana

VERSUS

Kennedy D. Kirk

NOV 9 2001

GFC **CALOGERO, Chief Justice, dissents and assigns reasons.**

I dissent from the majority's denial of this writ because I believe the lower courts erroneously denied the defendant's motion to suppress. The Fourth Amendment to the United States constitution has drawn a firm line at the entrance to the home, and thus, the police need both probable cause to either arrest or search and exigent circumstances to justify a nonconsensual warrantless intrusion into private premises. State v. Welch, 449 So.2d 468, 470 (La. 1984). Pursuant to La. Code Crim. Proc. art. 703, the state has the burden of proof on the admissibility of evidence seized without a warrant. Here, the defendant was arrested inside an apartment, without a warrant, and the state has not demonstrated that exigent circumstances were present. Consequently, defendant's arrest was unconstitutional, and his motion to suppress should have been granted.

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PARISH OF ORLEANS

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS # 398-116

KIRK, KENNEDY SECTION G

Motion hearing taken in the above-captioned matter before the HONORABLE JULIAN A. PARKER, Judge presiding Section G taken on the 1st of June, 1998.

APPEARANCES:

ADA JOHN JERRY GLAS

Representing the State of Louisiana

JACK DOLAN, O.I.D.P.

Representing the defendant

REPORTED BY:

BRIAN P. SALZER
CERTIFIED COURT REPORTER

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A. I was working with my partner, Detective Brumfield.

Q. Okay. And on that date, did you have the occasion to arrest Kirk Kennedy?

A. Yes, we did.

Q. Was this arrest concurrent with a search warrant, the execution of a search warrant?

A. That's correct.

Q. Could you please tell me the facts and the circumstances that were the basis for the search warrant?

A. On the day in question, myself and my partner, Detective Brumfield, set up a surveillance on the target location that was highlighted by the Sixth District Task Force hotline complaint. During that surveillance, we had a high foot traffic going back and forth from the apartment. We could observe from our location U.S. currency being exchanged for small packages of some sort. Later on into the surveillance, there was a black male subject that examined the contraband he had just purchased from the target location. Right across the street from the vehicle, we were holding a surveillance. At that time, we called in a takedown unit, which they took the subject down near the corner of LaSalle and Washington which is in relatively close proximity to the target location. Once it was confirmed that crack cocaine was being sold from that location, we secured the premise

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BEST AVAILABLE

search warrant for the target location.

Q. And did you personally prepare that search warrant?

A. Yes, I did.

MR. GLAS:

May I approach, Your Honor?

THE COURT:

Yes.

EXAMINATION BY MR. GLAS:

Q. I'm going to show you what I'm marking as S-1 for the purposes of the motion hearing only. Can you identify S-1 for the Court?

A. (Witness reviewing exhibit.) Yes, this is the search warrant I prepared for the target location which is 2316 Washington Avenue, Apartment Number 15.

Q. And is that apartment on the first floor, or is it, in fact, on the second floor?

A. It's on the second floor.

Q. And when you saw these transactions taking place, how far away were these transactions taking place from this apartment? What was the relationship?

A. Right in front of the door.

Q. Right in front of the door?

A. Right, they were walking to the door.

Q. Did you have the occasion to execute this search warrant?

A. Yes, we did.

Q. Okay. And what happened when you executed the search warrant?

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based on the exigent circumstances. And at that time, we frisk-searched the subjects for weapons upon entering the apartment. The subject, Kennedy Kirk, was in possession of a plastic -- it looked more like a medicine bottle. I think he had like 53, 58 pieces, something like that of crack cocaine on his person.

Q. Okay. And when you say on his person -- and you may go ahead and refer to the incident report to refresh your memory. Do you have it?

A. It was located in his front underpants, I believe.

Q. Okay. And was that crack cocaine alone, or was it inside a plastic bottle, or anything like that?

A. I think it was inside a plastic bottle.

Q. Okay. Was Mr. Kennedy alone in the apartment, or was there someone else there by the name of Paul Cook?

A. Yes, there was also a Mr. Paul Cook. And if I'm not mistaken, at the time we entered, when we entered the apartment, he ran over to -- there was a chair located between the bed and I think there was another dresser or something over there. And he sat on top of a weapon. I'm not sure what it was. I think it might have been a nine millimeter or something.

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a search of Mr. Paul Cook as well?

A. Yes. Mr. Cook was also in possession of I think like 19 rocks that he had in one of his front pants pockets.

Q. Okay. And do you see Mr. Kirk Kennedy present here in the courtroom here today?

A. Yes, he's seated next to the defense attorney in the orange OPP uniform.

Q. And do you see Mr. Paul Cook present in the courtroom today?

A. No.

MR. GLAS:

Okay. At this time, Your Honor, the State tenders the witness.

THE COURT:

Cross-examination?

EXAMINATION BY MR. DOLAN:

Q. All right, Officer, let me ask you this: You stated on March 5th, 1998 approximately 7:15 p.m.?

A. On what?

Q. On March 18th?

A. Okay.

Q. Have you got that?

A. No.

Q. You were there. All right, you received information of some activity in the 2300 block of Washington Avenue?

A. The task force received information.

Q. The task force?

A. It went to Sergeant --

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out of that apartment complex. Was there any foot traffic directly going to one specific apartment at that point in time?

A. I didn't say in and out of the apartment complex. I said to that apartment.

Q. Okay. Now you stated some information came through an informant. Did that informant narrate to your sergeant and he in turn narrate to you the possible number that was handling this traffic, the possibility of that narcotics activity?

A. I was already in possession of the apartment number when I originally set up the surveillance.

Q. Okay. You set up that surveillance. Then you saw activity. Then you saw some of what you believe somebody made a purchase, correct? Did you, yourself, after that purchase was made by that individual, did you, yourself, or your partner stop that individual and check him out to see if he had any contraband on him?

A. No, but we directed a takedown on that individual.

Q. A takedown. That means a stop, correct?

A. Correct.

Q. How far was that arrest made from that particular complex?

A. Like I stated earlier, it was within a hundred yards of that apartment.

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A. It was near the intersection of LaSalle and Washington.

Q. All right. When this takedown as you stated was made on that subject, whoever he may be, did you have an idea of where that individual came out of or what apartment he came out of at that time?

A. We saw him purchase the contraband. That's why I directed the takedown on that individual.

Q. I'm saying Apartment A, B, 1, 2, 3. Anything designated?

MR. GLAS:

Objection, argumentative. He's answered it.

THE COURT:

Overruled.

THE WITNESS:

Like I stated earlier, Apartment Number 15. That was the location.

EXAMINATION BY MR. DOLAN:

Q. Fifteen, okay, all right. Based on that information, what did you do? Is that when you went out to secure the search warrant or one of the officers secured the search warrant based on some activity coming out of Apartment 15?

A. Once the subject was taken down, he was transported to the Sixth District Police Station. He was interrogated by Sergeant Gaudet, Sergeant Poole. At that time, we were

App. 3

the target location. And upon doing so, based on the exigent circumstances, the apartment was secured and then we obtained the search warrant.

Q. The information was coming from an individual who had been placed under arrest for possession of cocaine, right? It wasn't from any informant? It was from an individual subject who you interrogated at the district station?

A. That particular takedown was.

Q. Right, the takedown person?

A. Correct.

Q. Your information was based primarily for you to secure that search warrant, right?

A. If the sergeant obtained information from that individual, we didn't need his information. We already had our own information. We were already working that information. I called in the takedown on that individual after I observed him purchasing illegal contraband from Apartment Number 15. He just confirmed everything that we already knew.

Q. All right. That arrested subject from what I gather from the application was a fellow by the name of Leslie Butler?

A. That's correct.

Q. And based on that, you say the stoppage and the arrest of that subject, you went and secured a search warrant from the

App. 3, p.

correct?

A. That's correct.

Q. All right. Now, to your knowledge, during the time that that search warrant was secured, was any activity going on at that apartment by any members of the New Orleans Police Department knocking on doors, pushing doors in, anything like that?

A. Ask the question again.

Q. I'm saying who -- put it this way. Let's start with this premise: Who went to get that warrant, you?

A. Yeah, I wrote the warrant, correct.

Q. You wrote the warrant?

A. After we had secured the residence.

Q. To your knowledge, was any activity going on by NOPD at that particular apartment, Number 15, during the absence of you going to secure that warrant?

A. We left officers in the apartment, that's correct.

Q. You had officers in the apartment?

A. That's correct. Like I stated earlier, we secured the apartment. We entered the apartment and secured it. Then we obtained the search warrant. Once we entered the apartment to secure it, all the subjects in the apartment were searched.

Q. How did you secure the apartment? That's what I can't figure out. How did you secure the apartment? What right gave you to

App. 3, p.

A. The exigent circumstances believing that the illegal contraband would be destroyed.

MR. GLAS:

I object.

THE COURT:

Go ahead and finish.

THE WITNESS:

Once information that we had actually detained someone that left the apartment -- we thought the information would get back to them and they would destroy the contraband.

EXAMINATION BY MR. DOLAN:

Q. You had somebody who left the apartment? Who was that?

MR. GLAS:

Now I'd like to object. I'm going to object to the whole line of questioning. It calls for a legal conclusion. This Court is here to decide whether they had the right to enter the apartment. He's asking him, "What right did you have?"

THE COURT:

Objection overruled. Proceed.

EXAMINATION BY MR. DOLAN:

Q. What right did you have to enter that apartment?

MR. GLAS:

Asked and answered.

THE COURT:

He's already answered that.

App. 3, p. 13

ORDER OF SEARCH

TO: THE SUPERINTENDENT OF THE NEW ORLEANS DEPARTMENT OF POLICE and/or HIS DESIGNATED REPRESENTATIVES.

AFFIDAVIT(S) HAVING BEEN MADE BEFORE ME BY: Det. John A. Brunet #582

THAT he has good reason to believe that on or in the (premises) (person) (vehicle) located at 2316 Washington Ave, apartment #15 within the Parish of Orleans, State of Louisiana, as more fully described in the application for this warrant, there is now being concealed certain property, namely, All contraband controlled dangerous substances, more particularly, crack cocaine with any concomitant physical evidence, either substantive or trace, associated with it's use, possession, packaging and distribution.

WHICH said property constitutes evidence of the commission of a crime or offense against the laws of the State of Louisiana set forth in the Louisiana Revised Statutes, and as I am satisfied from the affidavit(s) submitted in support of the application for this warrant that there is probable cause to believe that the aforesaid grounds for the issuance search warrant exist;

YOU ARE HEREBY ORDERED to search forthwith the aforesaid (premises) (person) (vehicle) for the property specified, serving this search warrant and making the search, and if the property be found there, to seize it, leaving a copy of this warrant and a receipt for the property seized, to make your written return on this warrant including a written inventory of the property seized, and to bring the said seized property into the court (before the judge, the clerk, the sheriff, or any court officer who usually acts as the custodian) within ten days of this date as required by law.

YOU ARE (ARE-NOT) AUTHORIZED to execute this warrant and to make this search during the daytime or the nighttime and if the property herein described be found on the (premises) (person) (vehicle) herein described to seize said property in accordance with law.

YOU ARE (ARE-NOT) AUTHORIZED to execute this warrant and make this search on a Sunday and if the property herein described be found on the (premises) (person) (vehicle) herein described to seize said property in accordance with law.

THIS WARRANT MADE IN DUPLICATE ORIGINAL, NEW ORLEANS, LOUISIANA, THIS 05th DAY OF March 1998.

JUDGE, SECTION ____ CRIMINAL DISTRICT COURT

COPIES:
Original: Unit File
1st Copy: Issuing Magistrate
2nd Copy: Person Being Served
3rd Copy: District Attorney
4th Copy: Issuing Magistrate Upon making Return

NOPD Form 117-A (rev. 7/73)

1x 345

AND STATE OF LOUISIANA

On Thursday, March 5, 1998, at approximately 7:15pm, Detective John Brunet, assigned to the Sixth District Task Force, was on surveillance in the 2300 block of Washington Ave. The target location was and upstairs apartment on the second floor, and was visible from Washington Avenue. The detectives obtained this information from a Sixth District hot-line complaint form, stating that narcotics were being sold from this location day and night. The detectives then formulated a plan for the surveillance, and a take down unit on the outer edge of the target location.

At or about 8:15 pm, Detective Brunet had observed what appeared to be several drug transactions as a short brown skin, b/m subject known to the detectives as "Paul", and a taller b/m subject known as "Kennedy", served several subjects from the door of the apartment. The subjects exchanged U.S. currency for a small package of some sort, believed by the detective to be crack cocaine.

Based on Detectives Brunet's eight years of undercover narcotics experience, a take down was called after a subject attired in a brown jacket, and gray sweat pants purchased contraband. He attempted to walk from the area. The subject was taken down near the intersection of Washington and Lasalle Street and found to be in possession of crack cocaine. After he was advised of his Miranda rights, and the charges pending he admitted to the detectives, Sgt S. Gaudet and Sgt. S. Poole that he purchased the contraband from a second floor apartment located at 2316 Washington Ave. apartment number #15. This conformed the facts and circumstances listed in the hot-line complaint, and the surveillance observation made by Detective Brunet from his surveillance vehicle, parked across the street from the apartments.

The arrested subject was identified as Leslie Butler, b/m, D.O.B. 7-18-54, residing at 4600 Laurel st. apt #4. He was arrested and booked accordingly.

The Detectives immediately secured the apartment do the exigent circumstance, based on the amount of foot traffic in the area, and believing that word of the arrest would get back to the occupants of the apartment, and vital evidence would be destroyed.

Based on the above listed circumstances Detective John A. Brunet respectfully request, that this warrant be signed ordering the search of apartment #15, located at 2316 Washington Ave.

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 5TH DAY OF SEPTEMBER, 1998
NEW ORLEANS LOUISIANA

AFFIANT

MAGISTRATE COMMISSIONER

11:39

At 10:40 pm, on 04-05-98, I the undersigned member of the New Orleans Department of Police, executed the foregoing search warrant as follows:

I searched the residence described in said search warrant, and I left a copy of said warrant with premises, together with a receipt for the items seized.

The following is an inventory of the property seized pursuant to the said foregoing search warrant:

E-1 (1) PLASTIC FILM CANISTER CONTAINING (58) PIECES OF A WHITE ROCK
E-2 (1) PLASTIC FILM CANISTER CONTAINING (19) PIECES OF A WHITE ROCK
E-3 (2) GLASS TUBES CONTAINING RESIDUE
E-4 (1) CLEAR PLASTIC TUBE CONTAINING RESIDUE
E-5 (1) BLACKFILM CANISTER CONTAINING RESIDUE
E-6 (1) ONE BLACK/WHITE CLOTH BAG
E-7 (1) ONE CLEAR CONTAINER WITH RESIDUE
E-8 (1) CHROME SMOKING PIPE W/RED HANDLE CONTAINING RESIDUE
E-9 $283.00 IN U.S. CURRENCY
E-10 (1) BLUE STEEL SEMI-AUTO HANDGUN .380 CAL. 4"IN BARREL, IMEZ
E-11 (1) IMEZ .380 CAL MAGAZINE CLIP
E-12 (8) .380 CAL CARTRIDGES
E-13 (1) BLUE STEEL .22 CAL REVOLVER, 2" BARREL R.G. W/BROWN GRIPS
E-14 (6) .22 CAL CARTRIDGES
E-15 (1) ENVELOPE CONTAINING VARIOUS PAPERS
E-16 (1) ONE BLACK MARKSMAN REPEATER BB HANDGUN
E-17 (1) BOX CONTAINING (6) .45 CAL CARTRIDGES

The following is a list of all persons arrested pursuant to service of the search warrant:

PAUL COOK, N/M, D.O.B. 11-20-67, RESIDING AT 2316 WASHINGTON AVE.

KIRK KENNEDY, N/M, D.O.B. 2-2-64, RESIDING AT 2316 WASHINGTON AVE.

The following is a list of all persons listed as wanted pursuant to service of the search warrant:

NONE

This return made in duplicate original, in the presence of Sergeant Steven Gaudet/S. Poole, on this 06th day of March, 1998, New Orleans, Louisiana.

DET. JOHN BRUNET
Badge No. 582

lesser intrusive investigatory stop is that in the former, a reasonable person would not feel that he is free to leave, while in the latter, a reasonable person would feel free to leave after identifying himself and accounting for his suspicious actions; it is the circumstances indicating intent to effect an extended restraint on the liberty of the accused that is determinative of when an arrest occurs. U.S.C.A. Const.Amend. 4.

[8] Arrest ⇐63.4(1)
35k63.4(1)

A warrantless arrest must be based on probable cause. U.S.C.A. Const.Amend. 4.

[9] Arrest ⇐63.4(2)
35k63.4(2)

Probable cause for a warrantless arrest exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonably trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. U.S.C.A. Const.Amend. 4.

[10] Arrest ⇐63.4(2)
35k63.4(2)

Probable cause for a warrantless arrest is assessed by an objective standard that must withstand the detached, neutral scrutiny of a judge. U.S.C.A. Const.Amend. 4.

[11] Arrest ⇐63.4(2)
35k63.4(2)

In determining whether probable cause existed for a warrantless arrest, the court should take into account the practical considerations of everyday life on which average police officers can be expected to act. U.S.C.A. Const.Amend. 4.

[12] Arrest ⇐63.4(2)
35k63.4(2)

The determination of probable cause for a warrantless arrest, although requiring something more than bare suspicion, does not require evidence sufficient to support a conviction; probable cause, as the very name implies, deals with probabilities. U.S.C.A. Const.Amend. 4.

[13] Arrest ⇐63.4(2)
35k63.4(2)

The determination of probable cause for a warrantless arrest, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands. U.S.C.A. Const.Amend. 4.

APPEAL FROM CRIMINAL DISTRICT COURT ORLEANS PARISH NO. 398-116, SECTION "G" Honorable Julian A. Parker, Judge JUDGE MICHAEL E. KIRBY

Harry F. Connick, District Attorney, Juliet Clark, Assistant District Attorney, New Orleans, LA, Counsel for Plaintiff/Appellee.

Junki Kim, Student Attorney Tulane Law School Community Services Program, Sherry Watters, Louisiana Appellate Project, New Orleans, LA, Counsel for Defendant/Appellant.

(Court composed of Judge WILLIAM H. BYRNES, III, Judge MICHAEL E. KIRBY, Judge TERRI F. LOVE).

KIRBY.

*1 STATEMENT OF THE CASE:

The defendant and co-defendant, Paul Cook, were charged by bill of information with possession of cocaine with intent to distribute on May 18, 1998. La. R.S. 40:967. The defendant was arraigned and pled not guilty on May 21, 1998. He filed a motion to suppress evidence which was denied June 1, 1998. A twelve member jury found the defendant guilty as charged September 22, 1998. He was sentenced November 23, 1998, to fifteen years at hard labor without benefit of parole, probation, or suspension of sentence. He filed a motion for reconsideration of sentence that was denied. He filed a motion for appeal that day.

ERRORS PATENT:

[1] La. R.S. 40;967(B)(4)(b) provides that only the first five years of the sentence be served without benefit of parole, probation or suspension of sentence. Because the defendant was sentenced without those benefits on the entire fifteen year sentence, the denial of those benefits on the last ten years of his sentence are deleted.

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FACTS:

Detective John Burnett testified at trial that he and his partner, Detective Derrick Brumfield, went to the 2300 block of Washington Avenue on March 5, 1998, around 5:00 p.m. to observe the apartment in question. At the motion to suppress hearing, the officer testified that they went to the location in response to a citizen complaint. Once there, they saw a person approach the apartment and exchange currency for a small object. They continued watching the apartment and saw a total of four apparent narcotics transactions. Burnett saw the defendant complete a transaction. After the fourth transaction, Burnett ordered that the buyer be "taken down." Detective Steven Gaudet and his partner stopped the man. Because the stop took place within a block of the apartment, Burnett feared that evidence would be destroyed and ordered that the apartment be entered. Upon the officers' entering, the defendant sat on a gun. Another weapon was on a table to the defendant's left. Both defendants were "secured." Officers obtained a search warrant. After the warrant was obtained, a search of the defendant revealed fifty-eight pieces of crack cocaine and $283.00. The officers seized a cooking tube from the apartment.

ASSIGNMENT OF ERROR:

[2] The defendant argues the trial court erred in denying the motion to suppress evidence. He makes a long argument that there were not exigent circumstances for entering the apartment without a warrant. However, the evidence required to prove that the defendant possessed cocaine with the intent to distribute, namely the cocaine and the money, was not found in the apartment, but on his person. The only items found in the apartment were a cooking tube and guns, and the defendant was not charged with a firearms offense.

[3][4][5][6][7][8][9][10][11][12][13] This court recently reviewed the law on point in State v. Dorsey, 99-1819, pp. 5- 6 (La.App. 4 Cir. 4/19/00), --- So.2d ----:

*2 On trial of a motion to suppress, the State has the burden of proving the admissibility of all evidence seized without a warrant. La.C.Cr.P. art. 703(D); State v. Jones, 97-2217, p. 10 (La.App. 4 Cir. 2/24/99), 731 So.2d 389, 395, writ denied, 99-1702 (La.11/5/99), --- So.2d----, 1999 WL 1038367. A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony. State v. Mims, 98-2572, p. 3 (La.App. 4 Cir. 10/5/99), 752 So.2d 192, 1999 WL 1012969. "In reviewing a trial court's ruling on a motion to suppress, an appellate court is not limited to evidence adduced at the hearing on the motion to suppress; it may also consider any pertinent evidence given at trial of the case." State v. Nogess, 98-0670, p. 11 (La.App. 4 Cir. 3/3/99), 729 So.2d 132, 137.

A search conducted without a warrant is per se unreasonable, subject only to a few specifically established and well-delineated exceptions. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); State v. Tomasetti, 381 So.2d 420, 423 (La.1980). One of those exceptions is a search of a person and the area within his immediate control incident to a lawful arrest. Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); Tomasetti, 381 So.2d at 423. La.C.Cr.P. art. 201 defines arrest as "the taking of one person into custody by another [by] actual restraint of the person." The distinguishing factor between an arrest and the lesser intrusive investigatory stop is that in the former, a reasonable person would not feel that he is free to leave, while in the latter, a reasonable person would feel free to leave after identifying himself and accounting for his suspicious actions- "it is the circumstances indicating intent to effect an extended restraint on the liberty of the accused" that is determinative of when an arrest occurs. State v. Allan, 95-1754, p. 6 (La.9/5/96), 682 So.2d 713, 719.

A warrantless arrest must be based on probable cause. State v. Jackson, 450 So.2d 621, 627 (La.1984); State v. Creecy, 98-1472, p. 6 (La.App. 4 Cir. 7/14/99), 742 So.2d 615, 619. Probable cause exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonably trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. State

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v. Johnson, 98-2544, p. 6 (La.App. 4 Cir. 11/17/99), 748 So.2d 527, 1999 WL 1080209; State v. Bryant, 98-1115, p. 5 (La.App. 4 Cir. 8/4/99), 744 So.2d 108, 111. Probable cause is assessed by an objective standard that must withstand the "detached, neutral scrutiny of a judge." State v. Fisher, 97-1133, p. 8 (La.9/9/98), 720 So.2d 1179, 1184 (quoting State v. Flowers, 441 So.2d 707, 712 (La.1983), cert. denied, 466 U.S. 945, 104 S.Ct. 1931, 80 L.Ed.2d 476 (1984)). In determining whether probable cause existed, the court should take into account the "practical considerations of everyday life on which ... average police officers can be expected to act." Id. (quoting State v. Raheem, 464 So.2d 293, 296 (La.1985). The determination of probable cause, although requiring something more than bare suspicion, does not require evidence sufficient to support a conviction; probable cause, as the very name implies, deals with probabilities. State v. Green, 98-1021 (La.App. 4 Cir. 12/22/99), --- So.2d ----, 1999 WL 1257281. The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands. Id.

In this case, the officers received information from a citizen that drugs were being sold from an apartment. They observed the defendant come to the door and complete drug transactions. They stopped a buyer and found him in possession of cocaine. They immediately knocked on the door of the apartment, arrested the defendant, searched him thereto and discovered the cocaine and the money. The officers had probable cause to arrest and properly searched the defendant incident thereto. The trial court properly denied the motion to suppress. This assignment is without merit.

CONCLUSION:

*3 Therefore, we affirm the conviction, delete the denial of benefits on the last ten years of the sentence, and affirm as amended.

AFFIRMED AND AS AFFIRMED AMENDED.

END OF DOCUMENT

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App. 2, p. 4